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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,492	02/04/2004	Antoinette M. Chandler	SIMPP001	4967
22434	7590	06/27/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP				GROSSO, HARRY A
P.O. BOX 70250				ART UNIT
OAKLAND, CA 94612-0250				PAPER NUMBER
				3727

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/772,492	CHANDLER ET AL.	
	<b>Examiner</b> Harry A. Grosso	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 February 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 04 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>526/05</u> .	6) <input type="checkbox"/> Other: _____

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn to a toddler drinking container, classified in class 220, subclass 714.
  - II. Claims 10-15, drawn to a method of making the container, classified in class 264, subclass 500+.
2. Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the container can be make using other forming processes such as vacuum forming.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Ms. Mary Olynick on June 17, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fourth, fifth and sixth sidewall portions (claim 5) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The examiner notes, also, that the wherein statement in claim 5 states that the fourth sidewall circumference is sized so that an adult can wrap his/her hand around the first circumference. The relationship between the size of the fourth circumference and

the first circumference is unclear and the examiner questions whether the reference to the first circumference in the last line should be a reference to the fourth circumference.

***Claim Rejections - 35 USC § 112***

7. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 3 recites an age range of about 6 months to about 1 year. This falls outside of the age range of about 1 year to about 3 years stated in claim 2 on which claim 3 is dependent. Claim 3 cannot expand the range of claim 2.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leinenweber (2003/0085232 A1, May 8, 2003) in view of Caldicott et al (2002/0158075 A1, October 31, 2002).

11. Regarding claim 1, Leinenweber discloses a beverage container with a bottom portion and a top portion that are not detachable, and a drinking spout. (Figure 1, paragraph 0020). Leinenweber does not teach the use of a one-way valve. Caldicott et al discloses a one way valve that opens when negative pressure is applied (suction) and closes to substantially prevent fluid from leaking out of the spout when negative

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pressure is not applied (Figures 4A and 4B, paragraph 0033). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a one way valve that opens when negative pressure is applied (suction) and closes to substantially prevent fluid from leaking out of the spout when negative pressure is not applied as disclosed by Caldicott et al in the container disclosed by Leinenweber to prevent leakage from the spout when negative pressure is not applied.

12. Regarding claim 7, Leinenweber discloses a safety seal (106, Figure 2, paragraph 0021).

13. Regarding claim 9, Leinenweber discloses the bottom portion of the container is prefilled (paragraph 0009).

14. Claims 2-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leinenweber and Caldicott et al as applied to claim 1 above, and further in view of Chan et al (6,305, 562).

15. Regarding claims 2-4, the container of claim 1 is disclosed as discussed above and Leinenweber discloses a container with a first sidewall at the midpoint of the container with a circumference smaller than second and third sidewall circumferences at the ends of the container. Leinenweber discloses that the container is intended for use with a child between the infant and preschool stages but does not teach a specific age range. The examiner deems the range between infant and preschool to encompass from 6 months or earlier to 3-4 years of age which is inclusive of applicant' age range. Leinenweber and Caldicott et al do not teach sizing the first sidewall circumference to fit

a child's hand. Chan et al discloses a drinking container for an infant with a first sidewall circumference smaller than a second or third circumference and teaches that the first sidewall circumference is sized to substantially fit the hand or hands of an infant (Figures 2 and 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a first side wall circumference is sized to fit the hand or hands of an infant as disclosed by Chan et al in the container of claim 1 to make it possible for an infant or toddler to securely grasp the container.

16. Regarding claim 5, the container of claim 2 is disclosed as discussed above and Leinenweber further discloses a container with a fourth sidewall at the ribs adjacent the midpoint of the container having a smaller circumference than a fifth and sixth sidewall portion at the maximum circumference of each end of the container. The examiner deems that an adult would inherently be able to wrap his/her hand around the first sidewall circumference, which is sized to fit the hand of an infant.

17. Regarding claim 6, the container of claim 2 is disclosed as discussed above and Leinenweber discloses that the container is an hourglass shape (Figure 4).

18. Regarding claim 8, the container of claim 1 is disclosed as discussed above but Leinenweber and Caldicott et al do not teach the use of metered lines on the bottom portion of the container. Chan et al discloses the use of metered lines on the container to indicate the amount of fluid in the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use

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of a first metered lines on the container as disclosed by Chan et al in the container of claim 1 to provide an indication of the amount of fluid in the container.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*M. Newhouse*  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
Lee Young  
Supervisory Patent Examiner  
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hag